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THE

Law vol. 15.

C A S E

Of the HONOURABLE

James Annesley, *Esq;* K

HUMBLY OFFERED

To all Lovers of Truth and Justice.



Printed in the Year 1756.

THE
Mr Annesley, was tried for murder
& the pamphlet assumes that his
own Uncle assisted the prosecution



T H E
C A S E, &c.

AS the Cause between the present Earl of *Anglesey* and the Honourable *James Annesley*, Esq; has long been in a languishing State, and has now slept for so many Years, every humane Heart we hope will be pleased that a Cause which carries with it so much Truth and Conviction, should once more revive. But, it is the tender and feeling Affections of those Hearts that must give it new Life and Strength to rise from its Lethargy; for the Cause, alas! however, these Lines may seem a Revival of it, must for ever Sleep, unless, assisted by the generous Aid of those who feel for Justice, injured and oppressed. The Complexion of this Affair from a bare Narrative of the Facts, appears such as never was beheld before, and God forbid ever should again. Here is a young Nobleman (for so we may venture to call him, from the Verdict already given him) whose Legitimacy has been proved before a Court of Judicature in *Ireland*; who is still withheld from the Enjoyment of, even that to which the Verdict entitled him, after such Persecutions as are scarce to be believed; and, whose Wrongs call aloud for the united Assistance of every Friend of Justice to vindicate, if ever private Cause deserved a public Commiseration. But what is more afflicting to him, than all the Sufferings he even underwent in his
Slavery

Slavery for thirteen Years in *America*, is, that he is disabled from maintaining his Claim in a Court of Judicature *here*, which only can invest him with his Right: For though, in Consequence of the Verdict, he became entituled to the paternal Estate, which is to the Amount of four or five hundred Pounds a Year; yet, the noble Lord his Uncle, by Writs of Error, Bills in Chancery, and other Delays of the Law, has so far defeated the Force of the Verdict, that, though it is now thirteen or fourteen Years since it was obtained; yet, has Mr. *Annesley* never received the least Benefit from it. 'Tis this that has obliged this unfortunate Gentleman to address the World in this Manner in his Behalf, whom he must now solely rely upon to plead his Cause. To mention the Sums of Money Mr. *Annesley's* Friends have expended in this Cause, would surpass Belief, but that which is now deemed sufficient to bring it to a Verdict in *England*, cannot, at the most extended Calculation, exceed 5,000*l*; for, as the Evidences are collected and lodged in the proper Office, all delaying and expensive Litigations, with which the other Side have embarrassed the Cause, for so many Years, are now out of their Power. It rests then to be brought to a single Verdict here, and though the *Irish* Verdict which was obtained, will not avail us upon a Hearing; yet, we doubt not the Truth will be made to appear still more manifest in these Courts, had we it in our Power to bring it before them, as the Evidences are since much encreased both in Number and Strength; for we dare affirm, that the Voice of the Court in *Ireland* declaring in Mr. *Annesley's* Favour, unfettered many Tongues, which before, possibly by Promises or Threats, were restrained from speaking the Truth.

In this calamitous and unprecedented Case, Mr.

Annesley

Annesley does not suffer alone ; there have been Gentlemen, who prompted by uncommon Humanity and Love of Justice, have laid their whole Fortunes at the Feet of the Cause, and hazarded their very Lives in Defence of it : The Consequence of which has been, that they are reduced, if possible, to a lower Ebb than the unfortunate Mr. *Annesley* himself, who has it not in his Power to afford them the least Return. I shall take the Liberty of mentioning the principal of these Gentlemen, I mean *Daniel M^cKercher*, Esq; who, from Ease and Affluence, has brought himself into Distress and Hardships to serve Mr. *Annesley* ; whose Humanity and Conduct, Generosity and Alacrity have exceeded all Description ; and who, it may be presumed, has not expended in the Cause, upon a moderate Calculation, less than 20,000 *l*. Such is the Case of the unhappy Mr. *Annesley*, such the Case of his ruined Friend !

We are now going to lay before those who are less acquainted with his extraordinary Story, such Parts of Mr. *Annesley*'s Life, as are most striking ; which, that we may not be thought to offend the Truth, we shall collect chiefly from the three Trials which are published. And, indeed, there are many and strong Reasons to be assigned, why they have escaped Numbers, and among the rest, the length of the principal Trial, the Contrariety of the Evidence, and the chief Scenes lying in another Kingdom ; add to this, the long Time the Affair has been dormant for the melancholy Reasons we have before suggested, and the great Pains which we presume may have been taken totally to erase and extirpate the least Remembrance of it.

AS to Mr. *Annesley*'s Birth and Legitimacy, we rest them upon the Verdict obtained at the great Trial, by a Jury of that Worth and Honour, that

that they are scarce to be parallell'd. To proceed then; Mr. ANNESLEY, after having been for some Years educated in a Manner becoming the Son of Lord *Altham*, and as one, that was to have inherited the united Honours of Earl of *Anglesey*, &c. became suddenly an Outcast, deserted by all his Friends, except those, which Providence provided from the meer Dictates of Nature and Humanity. To account for this deplorable Change, we must observe, that his Father, the late Lord *Altham* (who, we may for once, though with great Respect to his Memory, remark, was not the most happy in his *Œconomy*) having brought himself into distressful Circumstances, and the Boy, his Son, by the Will of his Predecessors, obstructing all his Measures for raising Money upon the Estate; his Lordship, I say, was prompted by the Insinuations of a wicked Woman (who is called in the Trials Miss *Gregory*, and whose Interest clashed with that of the Boy,) to divest himself so far of Nature and parental Love, as to turn the Child out of Doors, in cruel Hopes, that if Hunger, or any other miserable Incident, should take away his Life, he might obtain full Power over the Estate. In this abandoned Condition, Mr. *Annesley* continued till he was found out by a Butcher, who, knowing him to be the Son of Lord *Altham*, had the Humanity to take him into his House, and treated him as his own Child. While he was there his Father died, and the Boy, who was then about twelve Years of Age, was present at the Funeral, where he publickly claimed his Estate and Honours, as the Son and Heir of the deceased. But instead of being invested with what he claimed, here started up an Uncle, who taking to himself the Title and Estates, alledged Mr. *Annesley* to be an Impostor; but, to shew he did not think himself secure in his Title, we shall now find him a worse Enemy to him than Miss *Gregory*, or any he
had

had had before. Mr. *Annesley* continued some little Time after this with the Butcher, during which, though small, the Uncle's Designs began to appear, Attempts being made to take him away. Not long after, he left the Butcher, and lived in another Family in a Situation equally deplorable; from whence in about four Months from the Death of Lord *Altham*, he was *kidnapped*, as it is termed in the Trial, and transported as a Vagabond to *America*, where he continued in the most abject Slavery for near thirteen Years. To this, the noble Uncle makes little or no Defence. Of what happened to him in his Slavery, we chuse to be silent; but beg Leave to suggest that, were we to deliver what we could say with the strictest Truth, it would discover that he underwent Miseries, which would be thought too severe for the most abandoned Malefactor, much more so for one, who, notwithstanding his many Enemies, never willfully offended any Man. After his wonderful Escape from *America*, for such it was, and his Arrival again in *England*, he was found out by a Gentleman who had a perfect Remembrance of him (though, much changed by his Misfortunes) he having been many Years intimate with, and Agent to, the late Lord *Altham* in Mr. *Annesley's* Infancy. This Gentleman took him under his Care and Protection, and carried him to his own House, where he treated him with the Tendernefs of a Parent, who had found a Child that was lost. But, alas! poor Mr. *Annesley*, did not remain long in this happy Situation, before it was discovered by an unfortunate Accident, that all Opportunities were watchfully laid wait for to end his Persecutions with his Life. His Friend, who, tho' he could not foresee what happened, was not without his Fears of Designs from Mr. *Annesley's* Enemies, should they receive any Intimation of his return from *America*, thought proper to consult

sult Mr. *M'Kercher*, whom we have before and always must mention with the greatest Respect, to whom the whole of Mr. *Annesley's* Affairs were laid open, both by himself and his Friend. The Result of this Consultation was, that it would be prudent to remove him to an obscure Part of the Neighbourhood, for the Security of his Person, and accordingly, a Farm-House at *Staines* was pitched upon for his Reception, and he removed thither.

Not long after, he came to *Staines* (which was in the Year 1742) a melancholy Accident manifested his Uncle's Designs, more than the Transportation had done before. As Mr. *Annesley* was in the Fields with a Gun, he had the Misfortune to kill a Man, by an unhappy undesign'd Discharge of it. This Accident, terrible as it was in itself, was much aggravated by some who used every Means (many of them too gross to be mentioned) to bring it within the Punishment of the Law for wilful Murder. Mr. *Annesley* took his Trial at the *Old-Bailey*, and was acquitted. Being called upon in the Course of it to make his Defence, he observed,* *that he was very unable to make a proper Defence, having, by the Cruelty of those, whose Duty it was to protect him, been deprived of the Advantages of an Education he was entitled to by his Birth.* But it appears upon the Evidence given in a Trial, which succeeded this, that the Person whose Duty it was to have protected him, had not only deprived him of the Advantages of Education, but had declared to the Witness who had been his Agent, *that he would have given 10,000 l. to have had him hanged, for then he should have been easy in his Title and Estate.*† We must leave others to judge * * * * * why he should unprovoked, declare his Readiness to contribute so largely to his Destruction, that,

* See the Trial at the *Old-Bailey*, p. 13.—† See the great Trial.
he

he might be easy in his Honours and Possessions? And we must likewise leave others to Account for his coming upon the Bench,* and his indecent Behaviour there in the Course of this Trial. The World upon the Result of this Trial, began to believe the Cruelty of Mr. *Annesley's* Enemies, which, before they only surmised; and without Doubt, this, with the Information Mr. *M^rKercher* had before, determined this noble Defender of injured Justice to assert Mr. *Annesley's* Right at all Events.

At the latter End of the same Year it was resolved by the Friends of Mr. *Annesley*, to lay his Right before a Court of Judicature; and agreeable to this Determination, Mr. *M^rKercher*, with Mr. *Annesley*, and two of his Friends, set out for *Ireland*; where Mr. *Annesley* was born, and the principal Estates lay. They had not been long in that Kingdom, and their Designs made known, before they had the Satisfaction of seeing several of the old Servants which had lived with Lord *Altham*, Mr. *Annesley's* Father, come to them *voluntarily*, to make their Depositions in support of his Title; and among the first, the Woman who suckled him; soon after, his Dry-Nurse, with several others who had been Servants in the Family at different Times, some before, some at the Birth, and at the Rejoicings after it, with the Addition of many Persons of Fortune and Distinction. Mr. *M^rKercher* finding the Truth of Mr. *Annesley's* Right coming in from every Part of the Kingdom, and, indeed, from different Kingdoms; and having fixed upon a proper Part of the Estate to lay the first Claim to, *viz.* the old paternal Estate before-mentioned, in about three Months returned to *England* with Mr. *Annesley* and his Friends, to prepare for the Trial.

The noble Lord and his Dependants were quickly alarmed, and all other Views drop'd to unite in one

* See the Trial at the *Old-Bailey*.

Defence against the *Pretender*, as they called Mr. *Annesley*; and immediately, almost all the Counsel, from the Prime Serjeant downwards, were retained; inso-much that there was scarce a Gentleman, of the Bar, left for Mr. *Annesley*. But this was not the greatest of his Disadvantages, for he is here a Stranger in his native Country, attacking his powerful Uncle, and opposing an Estate almost inexhaustible. Against such Antagonists what could prevail? Nothing but TRUTH.

The Characters of Peers are, by the Wisdom of the Laws, (and for once we will call it the Severity of them) made sacred; which deprives the World of many strong Truths, which we could otherwise insist upon, and therefore we confine ourselves to the Trials; But should we, by the humble Design of these Lines, obtain an Opportunity of conveying these Truths to the World, by the proper Channel, in open Court, as they will be declared by the Voice of Numbers, whose Names are now in the Examiner's Office, we will venture to affirm that such Scenes will be disclosed as were scarce ever before recorded. To proceed; the noble Uncle not caring to trust to the Strength of his Estate, the Force of his Counsel's Rhetoric, or his own Witnesses, meditated a shorter and surer Way of ending all Disputes with his Nephew, Mr. *Annesley*. It was now the Time of the Races on the celebrated Curragh of *Kildare*, and Mr. *Annesley* and his Friends, who were come to *Ireland*, to attend the Trial, intending to be upon the Course, appeared there as Gentlemen who came to partake of the Diversion; but met with a Reception they little expected. They had scarce entered upon the Sod, before the Coachman of the Earl of *Anglesey*, who was driving the empty Coach and Six, upon the Curragh, (his Lordship being then on Horseback) pointing to Mr. *Annesley*, cry'd out, *There's the Villain, there's the Pretender*, and instantly drove the

the Coach towards him, with such Force, that had not Mr. *Annesley* been apprized of this Design, he must have been thrown from his Horse, and trampled under Foot. This was Usage which Mr. *Annesley*'s Friends could not bear; and Complaint was made of it to his Lordship, by Mr. *M'Kercher*; which instead of being attended to, was repaid with a stroke over the Head, with a Whip, by one of his Lordship's Companions; with many other Insults from my Lord and those about him. This Quarrel continued some Time, when Mr. *Annesley*, who was prudent enough to be only a Spectator, was told by the Standers-by, that if he did not make the best of his Way from thence, he would be murther'd. He accordingly rode off; but the Engagement between his, and my Lord's Friends grew still warmer; who continued their cruel Insults on Mr. *Annesley*'s, till the Gentlemen of the Country cry'd out *Shame*. When the Affray was a little abated, his Lordship began to enquire about Mr. *Annesley*; and being informed he was escaped from the Curragh, he was greatly exasperated, and called out to another Party of his Friends (who only waited the Word of Command) with this horrible expression, *to follow him, and tear him Limb from Limb* *. Upon this, a Number of Ruffians and Assassins (for I can call them no less) rode after Mr. *Annesley*, to execute the dreadful Orders they had received, but Providence most remarkably interfered in his Favour, tho' they interpreted it to be in theirs; for when Mr. *Annesley* was informed he was pursued, and was in Danger of being overtaken, he resolved to turn, and make what Defence was in his Power; but in the Turn, his Horse's hind-Feet slip'd into a Ditch; by which Accident he was thrown into it, and his Horse fell upon him. In this Condition his Pursuers found him, with all the Marks of Death about him, breathless and bloody; and

* See the Trial at *Atty*, p. 18.

though they thought him really dead, yet it was with some Difficulty that many of them were dissuaded, by some of the Spectators, from exercising their Cruelty upon him. In this deplorable Situation Mr. *Annesley* lay, till by the kind Assistance of some that were Witnesses of this Scene, he got necessary Help, and was carried to an Inn at the next Town; where he recovered, his Friends were refreshed and had their Wounds dressed. Here they remained all Night; but the opposite Party disappointed of their Prey the Day before, in order to secure it the next Morning, brought a Warrant which they obtained from a neighbouring Justice of the Peace, for an Assault made on them by the Friends of Mr. *Annesley*; and which was executed by a Party not unlike, but considerably more numerous and formidable, than that which pursued him the Night before. The House, where they were, was surrounded, and the Gentlemen, against whom the Warrant was issued, submitted and became Prisoners; upon which they were suffered to go in a Coach, to give in Bail; and Mr. *Annesley*, who was not charged by the Warrant, went on Horse-back. As they proceeded, surrounded by this bloody Troop, the Coach was overtaken by Lord *Anglesey's* Huntsman, who had with him a Gun, with which, as he afterwards declared in Court, he was instructed to shoot Mr. *Annesley*, whom he call'd the Pretender *. His Designs appearing soon after he overtook them, the Coach was stop'd by a Friend of Mr. *Annesley's*, who was on Horse-back likewise, begging that Mr. *Annesley* might be admitted into the Coach, for that otherwise he would be shot; he was accordingly taken in, and the Fellow, disappointed of his Aim, drop'd behind and followed at a Distance. When they came to *Naas*, and had given Bail, they sent for the Magistrate, insisting that the Person who carried the Gun might be examined,

* See the Trial at *Athy*, p. 23.

which

which was accordingly done, when it appeared that it was loaded with no less than *eight* Bullets, and that the Gun was the Property of the Earl of *Anglesey* †.

What the Design of the Gun was, has appeared, though Providence defeated it; but what that of the Warrant was, is not known, for no Trial succeeded; however Mr. *Annesley*'s Party thought proper to prefer Indictments at the Assizes at *Athy* in the County of *Kildare*, against his Lordship and his Friends, for divers Assaults on the Curragh, in most of which they were cast ‡.

From this Trial at *Athy* we have collected the Narrative of these Assaults, in which it is principally to be remarked that one of his Lordship's chief Witnesses was removed for Wilful and Corrupt Perjury. But we cannot leave this Trial without taking Notice of the Speech of the Court to his Lordship at the End of it, which is as follows §;

My Lord,

THE Concern I am under, is very great to see your Lordship here as an Offender, against the Law; and it is extremely more so, that it falls to my Lot to punish your Lordship for that Offence. Your Lordship has been found guilty of an Assault; and before I mention the Judgment of the Court, it will be necessary to remind your Lordship of some Circumstances appearing upon the Evidence attending this Fact, which greatly aggravate it. It appears, to the Satisfaction of the Court, that the Persons assaulted by you and Mr. —, gave no Provocation; had not struck nor attempted to strike; and it appears upon the Evidence of one of the Witnesses, that not so much as one Word had passed between your Lord-

† See the Trial at *Athy*, p. 8.

‡ N. B. We have through the whole followed the Order of the Facts; for the Trial at *Athy* did not come on till some Time after the great Trial, notwithstanding the Assaults were previous to it.

§ Trial at *Athy*, p. 41.

ship and them. This Circumstance is a great Aggravation of the Assault. My Lord, your Quality likewise greatly aggravates the Offence; you have the Honour to be a Peer of England, as well as of this Kingdom; and that Quality calls upon you to set an Example of Obedience to the King's Laws. The Place where this Accident happened, is another grand Aggravation of the Offence; it was done at a public Meeting of Gentlemen, on the Curragh, in the Presence of great Numbers, to whom such a Behaviour, in a Person of your Dignity and Station of Life, must be of a very bad Example; the Prevention of which is the Thing principally regarded by the Law. A Number of People there, by your Lordship's Example, might be led to take part on the one Side or the other; and if they had done so, it is to be feared that there might have been more fatal Consequences. It is with great Concern I mention this, but such was the Evidence, and I can't doubt but that your Lordship will be thoroughly perswaded, as I am satisfied every body else will, that the Court exercises their Discretion with great Tenderness, when they pronounce the Judgment, that a Fine of 30 £. only, is imposed upon your Lordship, for assaulting Mr. Kennedy; and you are fined accordingly in the Sum of 30 £. for that Assault.

The Day after this Trial, the Grand Jury found an Indictment against Lord Anglesey and some of his Accomplices, for a Conspiracy to murder; but they traversed the Indictment, and by that Means the Trial was put off till the next Assizes; at which Time Mr. M^cKercher who conducted the Prosecution, and several of the principal Witnesses being necessarily obliged to be in *England*, notice was given to the Parties indicted, of an Intention to put it off to the Assizes following; and Affidavits being sent over from *England*, of the Impossibility of their Attendance, the Court upon a Motion, stay'd the Trial. The Traversers took the Advantage of the Absence of
their

their Prosecutors, and got themselves acquitted for want of Prosecution; which, considering the Evidence had been so strong against them in the Trial for the Assault, and the further Evidence which it was publicly known would appear, were then universally looked upon as a strong Proof of their conscious Guilt, and the Terror of its appearing upon a fair Trial.

We come now to the great Trial at Bar, which came on in *Dublin*, on the 11th of *November*, 1743, and lasted till the 26th. Here Mr. *Annesley*, notwithstanding the voluntary Evidence which was offered, had great Difficulties to struggle with, as he was to turn back to a Period of Time twenty eight Years before, and wanted the Evidence of many who were not then alive; for the Minister who baptized him had been many Years dead, and no written Testimony of his Baptism remained, there having been no Register kept in the Parish where he was born at the time, nor for many Years before.* Add to this, that the present Earl of *Anglesey* administered to the late Lord his Brother, Mr. *Annesley's* Father; and was in Possession by that Means, of every Paper, which could give the least Light into Mr. *Annesley's* Claim; but, notwithstanding all these Difficulties, there was Truth appeared sufficient to obtain a Verdict in his Favour, which was given by an unquestionable Jury. To give the Reader a full View of the Evidence in this long Trial, we shall here insert the Speech of Mr. Baron *Mounteney* to the Jury at large; in which many material Things are insisted upon, which we have purposely omitted, as they will appear to greater Advantage, and in a clearer Light from the following most excellent Speech.†

* See the great Trial p 89.—† See the great Trial p 253.

The Speech of Mr. Baron Mounteney.

Gentlemen of the Jury,

MY Lord Chief Baron hath summed up this Evidence in so full, so judicious, and so masterly a manner, that it would be a very improper Task for *me* to attempt to go again with you over the Evidence at large.

I shall therefore confine myself to some of the more *capital* Parts of the Case: and (although I am extremely sensible in how inaccurate and disjointed a manner I shall lay my Thoughts before you, yet) with the Hope of striking out even the smallest *Spark* of Light, which may help to guide you through this dark Affair, I shall endeavour to recollect a few Remarks on those Parts of the Evidence which strike my Understanding in the most forcible Manner.

And, Gentlemen, I shall take up the Case where the Evidence for the Plaintiff, and the Observations of the Defendant's Counsel, closed; I mean the KID-KNAP-PING of the * Lessor of the Plaintiff, and the PROSECUTION FOR MURDER *carried on* against him by the Defendant.†

The latter of these two Facts I shall consider first; It is proved by *John Giffard*, the Attorney employed to carry it on; and in the Course of his Evidence, Gentlemen, several Things occur, which though not relative to that Prosecution, are yet extremely material for your Consideration.

In the first place, Gentlemen, he relates to you a Conversation between the Defendant § and himself so long ago as the Month of *March* 1741, and the Occasion upon which that Conversation happened. He tells you, that at that Time, it was the common Topic of Discourse, that Mr. *Annesley* was returned from the *West-Indies* to assert his Right; and that

* Mr. *Annesley*.—† At the *Old-Bailey* in the Year 1742.—

§ The Earl of *Anglesey*.

the Defendant my Lord *Anglesey* was at that Time embarrassed with a Variety of Law-Suits—that my Lord expressed great Uneasiness upon both Accounts—and thereupon told him, that “*he should be very glad to send to Mr. Annesley; and if he would allow him 2 or 3000 l. a Year, he would surrender up to him his Titles and Estates, and go live in France; for he should be much happier than to be so tormented, and had rather his Brother’s Son should have it than any body else; for if Jemmy had the Estate, he should live easy in France, for it was his Right, and he would surrender it to him;—that he did not value the Title—he would go live in France; and that he might live the easier there, would send for a French Master to converse with him in that Language.*”

The Counsel for the Defendant, Gentlemen, with great Art and Ingenuity endeavoured to avoid the Force of this Evidence: And in the first place, they represent this Declaration of my Lord with regard to a Compromise, and his going to *France*, as an *hasty, passionate* Expression, flowing from his *Uneasiness of Mind*, on account of the ill Situation of his Affairs, and his Resentment against the *Annesleys*.

But, Gentlemen, upon *Gifford’s* Evidence, this could not possibly be the Case; for he tells you, it was my Lord’s *Resolution*—that *he* continued in that Resolution from the Time of the first Conversation, which was before the 10th of *March*, 1741, to *May* 1742.—that in Pursuance of that Resolution, he actually did (as he had declared he would) send for a Person, one *Stephen Hayes*, and had him in the House, to converse with him in *French*; and that *he*, the Witness, was present forty times.*

The next thing, Gentlemen, suggested by the Defendant’s Counsel was, that my Lord *Anglesey* (in his then uneasy Situation, and so angry with the *Annesleys*, as *Gifford* said he was) might possibly be induced

* See the great Trial, p. 96.

to wish for such an Accommodation as was mentioned with the Lessor of the Plaintiff, not through a Conscience of his being the legitimate Son of the late Lord *Albam*, but, with a View of gratifying his *Resentment* by disappointing the *Annesleys*, and at the same time of *promoting his own Interest* by securing to himself a larger Share of the Estate than would otherwise remain to him.

But, Gentlemen, when you consider the following Part of *Giffard's* Evidence, you will find, that neither can *this* Interpretation hold : Because, if *this* had been the Scheme, my Lord must certainly have persevered in it. Whereas, upon the unhappy Accident of Mr. *Annesley's* killing a Man, this supposed Scheme is abandoned, and another (much more *beneficial*, as *Giffard* told you, for the Defendant, and absolutely destructive of the other) is immediately embraced ; which was, to carry on a *Prosecution* against Mr. *Annesley* for that Fact, and, if possible, to GET him hanged.

Consider, now, Gentlemen, the Evidence concerning that Prosecution, and the Circumstances attending it.

The *first* of May is the Day on which the Murder is in the Indictment laid to be committed.—On the *second*, Lord *Anglesey* retains *Giffard* to go down to *Staines* to collect Evidence, and to carry on the Prosecution—On the *fourth*, the Coroner's Inquest finds it *Wilful Murder*—Before *Giffard* returns from *Staines*, my Lord goes down to *Hounslow* to meet him, in order to learn *how things went on* ; and declares to him that *he did not care if it cost him 10,000 l. if he could get Mr. Annesley hanged*.

Quo Animo are these things said and done by the Defendant ? Upon what Grounds was it that the noble Lord thus *officiously* interposed upon this Occasion ? that he shewed so much *Impatience* to learn HOW THINGS WENT ON ? that he *actually expended* such large

large Sums of Money, as *Giffard* expressly tells you he did (I think no less than 800 *l.*) and declared himself *ready to expend* much larger, in carrying on this Prosecution?—Was it for the Sake of Justice?—If so, Why all those Precautions, that *Contrivance*, which you were told of, that my Lord might *not appear* to be concerned in it?—If not for the sake of Justice, —then, Gentlemen, you are to consider upon what other Principle and Motives this extraordinary Conduct can be accounted for.—And this will be the less difficult for you to do when you shall compare these Facts and Circumstances with the *Reason* given by my Lord for that remarkable Declaration of his as to the 10,000 *l.* which *Giffard* swears positively my Lord mentioned to him—viz. *He did not care if it cost him 10,000 *l.* if he could get him hanged; “for* “ THEN *he should be easy in his Titles and Estates.”*

There is another Part of *Giffard's* Evidence, which, as it strikes *me* strongly, I shall mention for your Consideration; and that is, that my Lord told him (fifty times I think he said between the 7th of December 1741, and the 14th of July 1742, which was the Day of the Trial) that this *Pretender*, as he called him, was *transported for stealing a Silver Spoon*.

You will consider, Gentlemen, what Weight this Circumstance may have when coupled with the Complaints made against him by Miss *Gregory* of *thieving*—with what the Witnesses, who prove the several Attempts upon the Boy, and at last the actual Transportation of him, have told you of my Lord's repeatedly calling him *a thieving Son of a Whore*—and with the particular Charge which one of them swears *my Lord* made against him of *having stolen* from him *a Silver Spoon*.

I have endeavoured to state to you, Gentlemen, the main Substance of *Giffard's* Evidence: In order to avoid the Force of it, the Counsel for the De-

pendant have strongly insisted upon two Objections to his *Credit*.

The first is, that understanding, as he owns he did, that my Lord *Anglesey* by his Declaration as to the 10,000 *l.* meant, that he intended to *destroy* Mr. *Annesley* if he could, and that he would expend that Sum *in Means to have him hanged*, he did not decline being farther engaged, but still continued to carry on the Prosecution.

And indeed, Gentlemen, it does to me carry with it an Imputation upon *Giffard*, that he did not immediately fling up any Concern in this, or any other Business of my Lord's and publish this Declaration to all Mankind. But, Gentlemen, you will consider on the other hand what *Giffard* hath said in Excuse of himself. He tells you,—“*If there was any dirty Work, he had no Hand in it. He distinguisheth between a bad Purpose and the carrying on a legal Prosecution—and he tells you, that the Coroner's Inquest having found the Fact Wilful Murder, he thought that a sufficient Foundation for him to proceed.*”

The other Objection to his Credit is, that being an *Attorney* retained by Lord *Anglesey* to carry on this Prosecution (in any Suit between Mr. *Annesley* and my Lord, he swears positively he never was, nor ever expected to be retained) he comes here *voluntarily* to disclose the *Secrets of his Client*.

Now, Gentlemen, as to the Prosecution, you will observe, that the *Original Discovery* of my Lord's being concerned in it was *not voluntarily* made by the Witness; for he tells you, that he found himself under the Necessity of serving my Lord for a large Sum of Money, which remained due to him upon his Bill of Costs; and that, upon his so doing, my Lord filed a Bill against him in the Court of *Exchequer* in *England*, in his Answer and Schedule to which he was obliged to set forth the particular *Items* of his

Bill

Bill of Costs—that by this Means (as he supposeth Mr. *M^r Kercher* got Knowledge of it, and thereupon applied to him to give his Testimony in this Cause.

As to the *Conversation* between my Lord and him, I have already declared my Sense so fully, when the Point was debated, whether Evidence of it should be admitted or not, that I shall trouble you with a very few Words only upon it now.

Gentlemen, I can by no means allow it to be any Objection to the Credit of the Witness, that he *voluntarily discloseth* that which the Court hath unanimously determined *he was compellable to disclose*. And I must say this farther, that, in my Apprehension, *Giffard* could not have justified himself, either to God or Man, if he had not *disclosed* it; especially, as it was a Declaration wantonly made to him, not under the Seal of Friendship, nor of that Confidence which is necessary between *Client* and *Attorney*.

Gentlemen, you are the Judges, and you will carefully consider what Degree of Credit to give to this and every other Witness who hath been produced upon this Occasion; and God forbid, that any Part of the Evidence, any Argument, or any Observation, should have more, or less Weight with you than it will bear.

If you believe the Evidence of *Giffard*, you will then consider, that you have an *express Acknowledgment* of Right in the Lessor of the Plaintiff from the Mouth of the *Defendant*;—that, independently of this, you have Declarations and *Facts* which *strongly import a Consciousness* of that Right.—And lastly, you will consider what Strength this Evidence of *Giffard* adds (if any Strength is wanting) to the Evidence of the KID-KNAPPING in 1728.

That the Fact, *Gentlemen*, stands positively and fully proved by a Multitude of Witnesses, neither *discredited*, nor, as it was promised by the Defendant's Counsel, *contradicted*. And, indeed, if that Fact
was

was not so clearly proved, the Evidence of Mr. *Shelcrofs Ashe* is, in my Apprehension, sufficient to silence the least Doubt about it.

You will then consider, *Gentlemen*, if you believe that Evidence, whether there does not from thence arise the most violent *Presumption* of the *Defendant's Knowledge of Title* in the Lessor of the Plaintiff.

It is represented to you by the Defence, that it was notorious to every body conversant in that Noble Family, that Lady *Altham* never had a Son in Ireland—that she never miscarried—that she never was with Child. On the other Hand, that it was equally notorious, that my Lord had a Son by Joan Landy—and that the Lessor of the Plaintiff was that Son. Now, if this were the Case, for Heaven's sake, *Gentlemen*, what Apprehensions could the Defendant possibly be under from a Boy, who, if he had set up any Claim to the Title and Estate, must inevitably have been detected as a most notorious Impostor?

But if, on the other hand, this Boy was the legitimate Son of Lord *Altham* (and whether he was or not, must certainly lie in the Knowledge of the Defendant) then, *Gentlemen*, you will consider whether this *kid-knapping* and this *Prosecution* will not be easily and naturally accounted for, and whether any other adequate Cause than a Knowledge of his being so, can, with any Degree of Probability, be assigned for this extraordinary, this iniquitous Behaviour of the Defendant.

But, *Gentlemen*, the Counsel for the Defendant have told you, that the material Fact in this Case is the Birth; and unless that is incontestably proved, that the Plaintiff cannot possibly avail himself of any *Presumptions* (an ingenious Gentleman chose generally to call them *Suspensions*) which arise in this Case.

Gentlemen, I differ entirely from them upon that Head—If that, which to be sure is the material Fact,

Fact, were proved to you *incontestably*, the Plaintiff would then have *no Occasion* for *Presumptions*. *Presumptions* then only are or can be, of use when the Fact in dispute is not, nor can be, proved *incontestably*.

Gentlemen, as this Assertion hath been so strongly insisted on, and hath had so much Stress laid upon it, by every one of the learned Counsel, let me detain you a little to make a few Observations upon the Subject of *Presumptions*.

Presumptions, Gentlemen, have at all Times, and in all Laws which I have ever heard of, particularly in our own, been allowed to have great Weight in doubtful Cases. Some are of so high a Nature, that the Law will not admit of any Proof to the contrary : — And these are called *Presumptions Juris & de Jure*. Again, there are *Presumptions of Law* : as likewise what the Writers upon this Subject call *Presumptions of Man* (such as are collected occasionally by Man's Understanding from given Facts) which though they fall short of that Strength and *conclusive* Force which the others have, are yet to stand in the Place of full Proof *till the contrary is proved*.

“*Violenta presumptio* is many Times *plena probatio*,” are the express Words of my Lord Coke ; and the Case which that great Oracle of the Law puts upon it, is this : “*A Man is run through the Body with a Sword, in an House, whereof he instantly died—A man is seen to have come out of that House with a bloody Sword, and no other Man was at that Time in the House.*” Upon these Circumstances, Gentlemen, a *violent Presumption* arises, and shall stand for *full Proof*, unless the contrary can be proved, that That Man was the Murderer.

Now, Gentlemen, you will observe, that in the Case put (and many others of a like, or even inferior Kind, may be put, in which great Numbers of the King's Subjects daily suffer *capitally*) the Jury
from

from *Circumstances* infer a criminal *Fact* committed by the Person accused.—*A fortiori* it should seem reasonable, for a criminal *Fact proved*, to infer the *Circumstances* and *Motives* leading to that *Fact*.

Mr. Serjeant *Marshall* very properly mentioned to you the Case of the *Spoliation of a Deed*.

In that Case, Gentlemen, it is an established Maxim, “*That all Things are to be presumed in Disfavour of the Spoliator.*” And you will consider, whether a Parity of Reason will not operate strongly in the present Case. Mr. *Serjeant’s* Reasoning on this Head was entirely agreeable to what I remember to have heard laid down by *one* of the greatest Men who ever sat in a Court of Judicature, viz. *That Circumstances were, in many Cases, of greater Force, and more to be depended upon, than the Testimony of living Witnesses.*

Witnesses, Gentlemen, may either be *mistaken* themselves, or wickedly intend to *deceive* others. God knows, we have seen too much of this in the present Case on both Sides! But *Circumstances*, Gentlemen, and *Presumptions*, naturally, and necessarily, arising out of a *given Fact*, *cannot lie*. And, Gentlemen, it must be left to your Consideration, whether in this Case the *Presumptions* arising from the *Kidnapping*, and the *Prosecution for Murder*, do not speak stronger than a *thousand* Witnesses.

The next Observation, Gentlemen, which naturally ariseth from the *Kid-knapping* is, that the Lessor of the Plaintiff is thereby thrown fifteen Years back in his Evidence.—If his Case had come under your Consideration, or that of any other Jury, *soon after the Death* of the late Lord *Altham*, it would not have been attended with the Difficulties it now is, but must have received a very easy and clear Determination. Mrs. *Sbiells*, who is sworn to have brought him into the World,—the *Clergyman*, who is sworn to have *christened* him,—the Persons, who are sworn

to

to have been *Sponsors*, with many other material Witnesses, were probably all, or most of them then *living*, and might have borne their Testimony. — The Account which you now have of them is, that they are *all dead*.

In the next Place, Gentlemen, you are to consider the *Dangers* to which this Gentleman lies open in asserting his supposed Right; — on the one hand, from Witnesses officiously *obtruding themselves*, and on the other from Witnesses who may have been industriously *obtruded* upon him. And if you believe that these Difficulties have been occasioned by the wicked Act of the *Defendant*, you are then to consider whether a much slighter Evidence, than might otherwise have been required, will not satisfy you, in a Case thus circumstanced, of the Truth and Justice of his Claim.

But, Gentlemen, the Counsel for the Defendant farther tell you, “that although you might *possibly* be induced to *think* the Defendant *capable* of committing a *wicked* Act, yet that ought not to influence your Judgment as to the Determination of his *Property*.”

And, Gentlemen, I must agree that a wicked Act, nay repeated wicked Acts, in *general*, ought not to influence your Judgment. — But if the Defendant hath committed a most wicked Act *against the Person*, who then asserted himself to be the Son of the Lord and Lady *Altham*, and who is now contesting with him his Title and Estate, — if he hath *done another* very *extraordinary*, tho’ *legal*, Act against him, — in a clandestine Manner, — and coupled with a Declaration *highly criminal*, — This, in my Opinion, may, and ought to have *great* Weight with you upon this Occasion.

Another thing, Gentlemen, insisted upon by the Defendant’s Counsel was, that if the Case be *doubtful*, the *present Possession* ought to turn the Scale in Favour of the *Defendant*.

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Now

Now here I must again differ from the learned Gentlemen. If indeed upon the *whole* Evidence the Case stands doubtful, they say well: But if upon the *direct* positive Evidence the Case is balanced, then, Gentlemen, the *Kid-knapping* and the *Prosecution* will, in my Apprehension, turn the Scale in Favour of the *Plaintiff*. For a *violent Presumption* is to stand for Truth *till the contrary is proved*. Now if upon the positive Testimony on both Sides, the Mind remains in *Equilibrio*—then, Gentlemen, the contrary is *not proved*, and consequently the *Presumption stands*.

I cannot help saying that I think it pretty extraordinary in this Case, that so many Objections should be raised, and so much Stress laid upon them, against your being influenced in your Judgment by *Presumptions*—by *Suspensions*—by *Probabilities*.

Gentlemen, their *whole Defence* is built upon *Probability* and *Improbability*.

They first tell you, you are to judge not upon *Probabilities* but upon *positive Proof* of the material Facts; and to that *positive Proof*, when given, they tell you, you ought to give no Credit, for it is *improbable*.

There was one Objection of this Sort which I forgot to mention, and that was as to the Proof of the *Kid-knapping*; they told you, Gentlemen, that although the Defendant could be supposed *wicked* enough to commit such a Fact, yet it was inconceivable that he should be so *weak* as to do it at *Noon-day*—that he should carry the Boy through a public *Market*—nay, by the very Stall of *Purcell**, who had before protected him—(by-the-by, Gentlemen, you will remember that the Boy was charged with *Felony*, and carried off by *known Constables*) and the same Objection, I think, was before made to *Giffard's* Testimony, that it was utterly incredible, that any Man living should be so *weak* as to put himself

* The Butcher mentioned in p. 7.

into the Power of any other Man, by making such Declarations as *Giffard* swore my Lord made to him.

I must own, Gentlemen, that this Objection does not to my Understanding carry any great Weight with it.

Wickedness and *Weakness* generally go hand-in-hand together, and upon the repeated Observation of their doing so, is founded that well known Saying,

“*Quos Deus vult perdere prius dementat.*”

The next Part of the Case which I shall speak to, is the Evidence of *Mrs. Heath*, as it stands opposed to that of *Mrs. Cole*, and the Evidence of *Rolph* opposed to that of *Mr. Colclough*, *Turner*, and *Higginson*.

It was my Desire that *Mrs. Cole* and *Mrs. Heath* might be confronted, because I did then, and do still, think that this Case may receive great Light, and may be greatly *narrowed* for your Determination, by a careful consideration of *Cole's* Evidence, as it stands in direct Contradiction to the Testimony of *Heath*, whom I look upon as a *capital* Witness, and one of the main Pillars of the Defence.

In other Parts of the Case, Gentlemen, you meet with many Variations between the Witnesses, as to *Periods of Time*, and other minute Circumstances, which will not be of much Consequence in the Cause, or tend to impeach the *Credit* of those Witnesses on the one Side or the other—But when once you come to a Fact in which two positive Witnesses flatly contradict each other—a Fact, the Truth or Falshood of which, the Witnesses on each Side must, with as much Certainty and Exactness, know at the Time she gives her Testimony, as she did at the Time that Fact is said to have happened, let it be ever so long ago—so that *one* of them is, *to Demonstration*, *perjured*; then, Gentlemen, it becomes exceeding material for you, to consider which of two such Witnesses you will give *Credit* to; and your Determina-

tion of that Point, may go a great Way towards enabling you to form a Judgment upon the whole Case.

The first material Circumstance which occurs to me, in which *Cole* and *Heath* differ, is as to the going or not going away of Lord and Lady *Altham* from Captain *Briscoe's* (at whose House the Reconciliation was brought about) to my Lord's Lodgings at *Vice's* in *Essex-Street*.

Mrs. *Heath* swears positively, that, during their Stay in *Dublin*, they never lodged *one single Night* out of the House of Captain *Briscoe*—Mrs. *Cole* (supported by her Sister, Mrs. *Briscoe*—by *Alice Bates*, a Servant in her Father's Family——and by *Catherine M'Cormick*, *Vice's* Servant) swears as positively, that after staying four or five Days at her Father's, they went to Lodgings in *Essex-Street* (as to the Person's House she is not positive, but she takes it to be *Vice's*) and there continued a considerable Time, I think about *two Months*, before they left *Dublin* and went to *Dunmaine*. And, Gentlemen, you will remember that Mrs. *Cole*, when she was a second Time produced, gave you a particular Reason why she could be so positive as to that Fact, which was, “that, notwithstanding the Reconciliation between my Lord and Lady, her Father still continued uneasy about the Matter; and was very desirous and pressing, that they would leave his House, and go to other Lodgings, because he thought it would have a better Air, of their being well together,” which she explained afterwards, by saying, that it would become more public and notorious to Mankind, that my Lord and Lady were in Fact reconciled.

This Circumstance, as soon as it was mentioned, I thought, struck some Light into this Affair—it did to me explain clearly two other odd Circumstances, which I shall mention to you presently.

The

The next Fact, concerning which Mrs. *Cole* and Mrs. *Heath* stand in direct Opposition, is, the supposed *Miscarriage* at *Dunmaine*. Mrs. *Cole* swears positively, that about the Middle of the Night, after the Accident of Lord *Altham*'s breaking the Saucers; Mrs. *Heath* came into the Bed-chamber of her Mother, Mrs. *Briscoe*, with whom she lay, alarmed her with the Account of my Lady's being extremely ill, and begg'd that she would immediately rise and go to her, which her Mother accordingly did; that the next Morning she (the Witness) was in my Lady's Bed-chamber, where were present her Mother, Mrs. *Heath*, and several of the Servants—that her Mother there told her, that my Lady had miscarried, and *shewed her the Abortion in the Basin*.

Mrs. *Heath* on the contrary swears as positively, that she did *not*, either upon that or any other Night, call up Mrs. *Briscoe*—that she does not remember, that Mrs. *Briscoe*, or her Daughter, was in my Lady's Room the next Morning—and she swears positively that my Lady did not then *miscarry*, nay, that she was not, either *then*, or at any other Time with Child.

It was insisted on strongly by the Defendant's Counsel, that this Evidence of *Cole* was attended with great *Improbability*—that it was incredibly *strange*, that a Mother should shew an *Abortion* to her Female Child of such tender Years. And, indeed, Gentlemen, I think, *that* Fact does, *primâ facie*, appear to be extremely odd, and to carry with it a strong Air of Improbability.

There was *another* Fact, proved in the very Out-set of the Cause, which (tho' it had not the same Remark made upon it by the Counsel) struck me in a very odd Light; and that was, that upon the Reconciliation of Lord and Lady *Altham*, at Captain *Briscoe*'s, Mrs. *Dorothy Briscoe*, then not above Ten, and her Sister, Mrs. *Cole*, not then above Twelve
Years

Years of Age, were, with the Rest of the Family, called into the Room to see my Lord and Lady in Bed together.

But, Gentlemen, you will consider, whether the Reason which Mrs. Cole tells you her Father had for pressing Lord and Lady *Altham* to leave *his* House, and lodge else-where in *Dublin*, viz. that their Reconciliation might become *more notorious to Mankind*, does not fully explain and strongly corroborate the Proof of, those two odd, and otherwise unaccountable Facts.

Gentlemen, you will consider further, whether from these *three* Circumstances connected and compared together, there does not arise a strong Probability, that Captain *Briscoe*, (who I think appears to have been the Person, employed by the Duke of *Buckingham*, to bring about the Reconciliation) had some *Apprehensions*, that although the Reconciliation was effected, and although in Consequence of it Lady *Altham* should have Issue by my Lord—yet, that in some future Time, and for some Reasons or other, Lord *Altham* (whose Character and Conduct appear pretty extraordinary upon the Evidence in this Cause) might be induced to bastardize that Issue.

And, Gentlemen, you will consider further, whether such an Apprehension in *Briscoe*, as I have supposed, would have been *unnatural* or ill founded, when you have compared these Circumstances (which as I have mentioned, seem to render it probable, that he *had* such an Apprehension) with the Evidence of *Palliser* the younger. He relates to you a very extraordinary Conversation which passed between my Lord and him, about five Days before the Separation, as they were returning from *Bourkstown* to *Dunmaine*. He tells you that my Lord called to him in a familiar Manner and said, “Tom, I will tell you a Secret, as I
“ have no Son by my Wife, nor ever expect to have any,
“ and as my Lord *Anglesey* is very angry with me
“ for

“ for keeping this Woman—I am determined to put her away, not to disoblige my Lord *Anglesey*.” The same Witness had before sworn positively that he never *had*—that he never attempted to have—that he believes in his Conscience, that my Lord *did not suspect he had*—any Criminal Commerce with my Lady *Altham*; and that my Lord only made use of him as a *Colour* and Pretence for putting away his Lady.

Now, Gentlemen, you will observe, that upon this Testimony even of the *Defendant's* Witness (who indeed is a very material Witness for the Defendant in some other Parts of his Evidence, if you give Credit to him) Lord *Altham* was a Man capable of putting away his *lawful Wife*—to whom he had *lately been reconciled*—upon a mere *Pretence*—and for no other *real Cause* than that he might *not disoblige* Lord *Anglesey*: — If he were so, you will then consider, whether it be at all an *unnatural* and strained Supposition, that he was capable of abandoning, and *bastardizing* his *lawful Son*, in order to *oblige* some other *Person* or *Persons*.

This Supposition, Gentlemen, will, I think, appear *still less unnatural*, when you recollect how Miss *Gregory's* Behaviour to the Boy stands upon the Testimony of another Witness for the Defendant: I mean *Herd* (who, in his Account of the Boy's Treatment by my Lord before they came to *Dublin*, differs totally, as my Lord *Chief Baron* hath already observed, from all the Gentlemen of that Part of the Country, who have been produced before you.)

Herd, tells you, that when my Lord lived in *Propper-Lane*, great Complaints were made to my Lord against the Child, by Miss *Gregory* of his *Thieving*—that he cannot tell whether the Boy was really guilty or not, but that he *confessed* himself so—and that upon this my Lord (whom the Witness had *never once* seen *strike* the Child upon any Occasion in the

the Country) corrected him *more severely than ever he had seen any Child corrected in his Life.*

When the Witness was asked by my Lord Chief Baron, what those Things were, with the *Thieving* of which this Boy (who is admitted on all Hands to be the Son of my Lord, though his *Legitimacy* is disputed) was charged by *this Lady*, and for which he was so *cruelly corrected* by his *Father*, he tells you they were, “ A JOCKEY BELT and a PAIR OF PIGEONS.”

These are Circumstances which I must own, strike my Understanding strongly: You, Gentlemen, are the Judges, and you will well consider, what Weight they will carry, when connected with the rest of the Evidence; and what light may be collected from them to guide your Judgments on this Occasion.

I forgot to mention to you one Thing which I think is very remarkable upon *Heath's* Evidence, and that is, that she accompanies some of the *Plaintiff's* Witnesses in all the preparatory Steps, and separates from them only, when they come to the critical and material Facts themselves.

She recollects distinctly with *McCormic, Vice's* Servant, “ that my Lord came Home late one Night disordered with Liquor—that he made a great Noise with the Chair—that he quarrelled with her—that he jumped out of Bed from my Lady, and ran towards the Window—that he called for Mrs. Lucas the Midwife—swore he would send for her to see if my Lady was with Child, and with another Oath declared, that if she was not with Child, he would turn her away.” All these Circumstances she recollects minutely, and exactly agrees in them with the other Witness—but as to my Lady's Screaming upon this Occasion—there she separates.—She says, my Lady would have died first. As to her Miscarrying, or to any Discourse in the Family the next Day that she had Miscarried—this she positively denies.

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With Regard to the Miscarriage at *Dunmaine*—she agrees with *Cole*, the Fact of my Lord breaking the *Saucers*; that those *Saucers* had ugly or indecent *Figures* on them, and that my Lord had forbid them being brought to Table—But, that my Lady was the least *disordered* upon this Occasion—she denies—that she called up Mrs. *Briscoe*—that my Lady *Mis-carried*—that she kept her Chamber for several Days, or even one Day after—all this she positively denies, in direct Contradiction to what has been sworn by *Cole*. And here, Gentlemen, it will be extremely material for you to recollect that, pretty exactly to the Time at which *Cole* swears this Miscarriage happened, and my Lady kept her Chamber at least five Days, it appears from the Evidence of the Defendant's Witness (Mr. *Aaron Lambert*) that *Sutton* the Surgeon, whom my Lord brought over with him from *England*, but had turned out of his House, on Account of some Misbehaviour which he had been guilty of in the Family, was twice sent for to *Dunmaine*; that he twice refused to go, being picqued at his having been turned out of the Family—that being sent for a third Time, and my Lord's Chariot coming for him, he went, and continued attending my Lady at *Dunmaine*, to the best of the Witness's Remembrance for a Fortnight. This Evidence was produced in order to discredit *Brooks* the Piece of a Surgeon (as he called himself) produced on the Part of the Plaintiff, who in my Opinion sufficiently discredited himself. You will consider, Gentlemen, whether it does not go strongly in Support of the Testimony of Mrs. *Cole*, in Contradiction and Discredit of *Heath*; with Regard to whom an Observation was made by the Defendant's Counsel, which I was exceedingly surprized to hear from that Side of the Table. They took Notice of the peculiar Excellency of our Law, especially with Regard to Trials by Jury, on which Occasions the Witnesses are examined *viva voce*; that

from confronting Witnesses who contradict each other, and carefully observing their *Appearance* and the Manner in which they give their Testimony, some Light is to be collected; and the Court and Jury may in some Measure be enabled to form a Judgment upon a doubtful Case.

The Observation, Gentlemen, is undoubtedly just; but what I little expected to have heard from that Quarter—For, Gentlemen, when you recollect and compare together the *outrageous Behaviour* and *vociferous Affeuerations* of *Heath*, with the *calm, sedate, and modest Demeanour* of *Cole*—You will consider whether all the Weight which can be laid upon an Observation of that Sort does not lie entirely on the other Side.

Another Point which hath been strongly, and indeed very properly insisted upon by the Defendant's Counsel, is this:—They say it is extremely *improbable*, if this Person were really the Son of Lady *Altham*, that my Lady who is proved to have lived *two Years* after the Death of her Lord, should make no Enquiry about him.

But, Gentlemen, if you will compare the time of Lord *Altham's* Death with the Time of *Kid-knapping* the Boy, you will find, I think, that there is very little, if any Weight in this Observation.

Lord *Altham* died in *November*, 1727—the Letter which *M^r Mullen* swears she sent to Mrs. *Heath*, notifying my Lord's Death, (and which *Heath* swears she communicated to my Lady) bears Date the 18th of that Month—that Letter must be some Days at least going to *England*—On the 26th of the *March* following, the Boy appears from the *Tbolsel* Book to be indented to *Thomas Hendry* by the Name of *James Hensly*, and on the 30th of *April*, the next Month, it appears from *Stevenson's* Book, that he passed over the Bar of *Dublin*—So that, taking that to be Truth, which, I think, is liable to strong Objections

tions of *Improbability*, (that *M^cMullen* sent that Letter) there will be *very little more than five Months* between Lord *Altham's* Death, and the Transportation of the Boy.

When *Alice Bates* appears, and gives you an Account of her *joking* with Lady *Altham* about her *being with Child*, you are told by the Defendant's Counsel, that this is highly *improbable*——That Lady *Altham* was a very *baughty* Woman.——That it is *incredible* she should condescend to such *Familiarity* with a Person so much her Inferior.

Will it not appear to you *equally improbable at least*, that this *baughty* Lady should condescend to receive *Visits once a Week*, as *M^cMullen* tells you she did, from her——the Daughter of an *Ale-House-Keeper*.

It must be allowed that my Lady's living with Alderman *King* for thirteen or fourteen Months, conversing with him about her *Family Affairs*, and yet never mentioning to him her Son, does *prima facie* carry with it a great *Improbability* of her having at that Time a lawful Son.

But considering that my Lord had put her away upon a *Suspicion* (either real or pretended) of her *Virtue*; and had aspersed her Character, it might not be so prudent, nor perhaps so *probable*, that she should discourse with him, or any other Person, upon the subject of *Child-bearing*.

However, allowing this to be *improbable*——will it not be *equally improbable*, that the Care of communicating so material Intelligence as the Death of Lord *Altham*, should be intrusted, not to this Alderman *King*, or any other Person of some tolerable Figure in this Town, but to such a Woman as *M^cMullen*.

These, Gentlemen, are Circumstances which in my Apprehension weigh strongly against the Credit of *M^cMullen's* Evidence. But taking that Evidence to be true, you will consider whether the small distance

of Time between Lord *Altham's* Death, and the Transportation, does not greatly lessen the force of this Argument, which has been so strongly insisted upon by the Defendant's Counsel,—especially if you add to it, the Circumstances both of *Health* and *Fortune*, in which Lady *Altham* appears to have been at this Time.

And here, Gentlemen, will come in very materially for your Consideration, the Evidence of Mrs. *Deborah Annesley*, a near Relation of this noble Family.

She who had before told you, that her Brother frequently visited my Lord at *Kinna*—that when ever he returned from thence, and when ever my Lord visited at their House, it was their common Practice to drink the Health of my Lord's Son—that they all considered that Boy as my Lord's *lawful* Son, and the future Earl of *Anglesea* (so that it is not Fact as you have been told, that none of the *Relations* of the Family ever heard of Lady *Altham's* having a Son) this Lady, I say, tells you, that upon the Death of Lord *Altham* she and her Sister made frequent Enquiries after *this Boy*: That for some Time they could learn *no Account* of him, and at last they concluded that *he was Dead*. Now, if it became a general Reputation that he was so, then Gentlemen, though Lady *Altham* likewise might have made frequent Enquiries after this Boy (*non constat* upon the Evidence whether she did or not, and she might have made several, not at this Day capable of Proof) and might receive an Account, and give Credit to it, that he *was dead*; and this might put a stop to any further Enquiry, consistently with Lady *Altham's* Knowledge of this Boy's being her legitimate Son.

These parts of the Case, independant of the other, which have all been fully laid before you by my Lord *Chief Baron*, seem to me to have great Weight in them.

You, Gentlemen, will consider what Stress you will lay upon the Observations I have thrown out to you, and what Light may be collected from them.

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There were several other things, Gentlemen, which I designed to have mentioned to you, but the Fatigue which we have all undergone, hath been so very great, and the Time I have had for Recollection, so very short, that my Thoughts are too much diffipated to proceed, and indeed, I have already trespassed too much upon your Patience; considering the great Attention which you have all along given, and the careful Notes you have taken of the Evidence; I shall therefore now conclude with that which I at first set out with, the *Kid-knapping* and the *Prosecution*. If the Case be *doubtful*, upon the other Parts of the Evidence (whether it be or not you are the proper Judges) I must then leave it to your Consideration, whether the Evidence of those two extraordinary Facts may not be sufficient to determine you what Verdict to give upon this Occasion.

The Jury withdrew, and in a very short Time brought in their Verdict for the Plaintiff Mr. ANNESLEY; notwithstanding some of these honourable Gentlemen were considerable Losers in Lease-hold Properties, which they held of the Earl of Anglesey.

We have now given the Summary of three Trials; in all which Mr. *Annesley* prevail'd. Through the whole of this faint, tho' just Detail of the Facts, our Design has been to presume upon the known Characteristic of this Nation; the Humanity and Generosity of its People. Though, Mr. *Annesley* now supplicates the generous to aid his Cause, yet, there is no Doubt, but he will (if Heaven puts it in his Power) repay with ample Gratitude every the smallest Assistance: There is no Doubt, likewise, that he will have the same generous Sympathy with the Oppressed; and, it is to be feared there are many large Properties with-held from the lawful Owners of them, by the powerful Hand of Oppression and

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Usurpation. Here then is room for the Exercise of Benevolence, on Motives, religious, moral and political. Oh! then, let the humane, beneficent Heart; let the attentive judging Mind; let all that constitutes the good and great be employ'd in Support of this interesting Cause, and by such an Example extirpate all Oppression; that Justice and Peace may meet and kiss each other; the Orphan's Cries be no longer heard, and the Strength of Money no longer oppose Truth and Right, when it feels the whole World uniting in Behalf of them.

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THE Donations which the Friends to this Cause are inclined to contribute to the Use of it, are requested to be left with Sir JOSEPH HANKEY and Co. in *Fenchurch-Street*; where the strictest Honour will be observed for the right Application of them as proper Trustees will be appointed, whose Fidelity may be relied upon, and of which the Donors may be fully satisfied at the abovementioned Place.



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